

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ERNEST EDWARDS,

Petitioner,

v.

P. TASSON,

Respondent,

Civil No. 2:06-CV-13296

HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

OPINION AND ORDER DENYING CERTIFICATE OF APPEALABILITY

On July 31, 2006, this Court issued an opinion and order dismissing the petition for writ of habeas corpus without prejudice. *Edwards v. Tasson*, 2006 WL 2159979 (E.D. Mich. July 31, 2006). On August 11, 2006, petitioner filed a notice of appeal. The United States Court of Appeals for the Sixth Circuit has now remanded this matter for the sole purpose of determining whether a certificate of appealability should issue. *Edwards v. Tasson*, U.S.C.A. No. 06-2085 (6th Cir. December 4, 2006). For the reasons stated below, the Court will deny petitioner a certificate of appealability.

An appeal may not be taken from the final order of a district court denying a motion filed pursuant to 28 U.S.C. § 2254 unless a certificate of appealability issues. 28 U.S.C. § 2253(c)(1)(A). In order to issue a certificate of appealability, the district court must find that the petitioner has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are

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adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

The Court dismissed the habeas petition, because petitioner had been enjoined from filing *in forma pauperis* lawsuits in the United States District Court for the Eastern District of Michigan without leave of court, due to the numerous civil rights complaints and habeas corpus petitions that he had previously filed in this District, as well as in the Western District of Michigan. In 1996, Judge Lawrence P. Zatkoff reviewed petitioner’s history of filing complaints and petitions in this district. See *Edwards v. Hofbauer*, No. 96-CV-74292-DT (E.D. Mich. Oct. 31, 1996)(“Order Dismissing Complaint Under 28 U.S.C. § 1915(g) and Enjoining Plaintiff from Filing Future Complaints Without Prior Authorization”). Judge Zatkoff found that petitioner’s “history of unsubstantiated and vexatious litigation amounts to continued abuse of his *in forma pauperis* status” and enjoined petitioner from filing any additional *in forma pauperis* lawsuits in this District without leave of court. Judge Zatkoff ordered that any new complaint or petition filed by petitioner must be accompanied by:

- (1) an application for permission to file the pleading; and
- (2) an affidavit demonstrating that plaintiff’s allegations have merit and that they are not a repetition of plaintiff’s previous complaints or petitions.

Id.

Because Petitioner failed to file the required application or affidavit, petitioner was enjoined from filing this petition *in forma pauperis* and his habeas petition was dismissed.

The Court declines to issue a certificate of appealability, because reasonable

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jurists would not debate that petitioner has failed to comply with Judge Zatkoff's directives when he filed the instant petition. *Edwards v. Hofbauer*, No. 2005 WL 3544265, * 1-2 (E.D.Mich. December 27, 2005).

ORDER

Based upon the foregoing, IT IS ORDERED that a certificate of appealability is **DENIED.**

s/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: December 8, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 8, 2006, by electronic and/or ordinary mail.

s/Catherine A. Pickles
Judicial Secretary